

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re U.S. Patent No. 7,421,405)	
)	
Issue Date: September 2, 2008)	Group Art Unit: 3693
)	
Inventor: Douglas James Little et al.)	Examiner: Hai Tran
)	
Application No.: 09/991,914)	
)	
Filed: November 26, 2001)	Confirmation No.: 7544
)	
For: METHOD AND APPARATUS FOR)	
DEVELOPING INVESTMENTS)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)

Patentees request reconsideration of the patent term adjustment indicated on the face of this patent. In compliance with 37 C.F.R. § 1.705(d), this Request is filed within two months of the issue date of this patent. In addition, this request only raises issues relating to events occurring after mailing of the notice of allowance, specifically, the decision of the Federal District Court for the District of Columbia in Wyeth v. Dudas on September 30, 2008. Therefore, as required by 37 C.F.R. § 1.705(d), this request does not raise any issues that were raised or could have been raised in an application for patent term adjustment under 37 C.F.R. § 1.705(b).

In the event the Office disagrees that this Request is timely, Patentees request that the deadline be waived under 37 C.F.R. 1.183 in the interests of justice to take into account the cited judicial decision.

The U.S. Patent and Trademark Office (USPTO) issued the subject U.S. Patent No. 7,421,405 (the '405 patent) on September 2, 2008, with a patent term adjustment (PTA) of 1465 days. The application was filed on November 26, 2001. The USPTO reached the PTA of 1465 days in view of 1528 days of USPTO delay to issue the first notification under 35 U.S.C. § 132 (dated April 3, 2007), and 63 days of Applicants' delay. See Issue Notification dated August 13, 2008.

The front page of this patent and the USPTO's patent term adjustment calculation indicates that it is entitled to 1465 days of patent term adjustment. Patentees respectfully submit that this patent is entitled to 1982 days of patent term adjustment, and request that the Office issue a Certificate of Correction reflecting this correct patent term adjustment.

In accordance with 37 C.F.R. §§ 1.705(b)(1) and 1.18(e) this Request is accompanied by a payment of \$200.00.

In accordance with 37 C.F.R. §§ 1.705(b)(2)(iii) Patentees state that this patent is not subject to a Terminal Disclaimer.

In accordance with 37 C.F.R. §§ 1.705(b)(2), 1.702, and 1.703(a), Patentees submit that this patent is entitled to 1982 days of patent term adjustment as follows. A first notification under 35 U.S.C. § 132 was received

from the Office on April 3, 2007. In accordance with 35 U.S.C. § 154(b)(1)(B), and based on the three year anniversary date of November 26, 2004 from the first date of filing, 1375 days of USPTO delay accrued until the date the application issued, September 2, 2008. However, according to 35 U.S.C. § 154(b)(1)(A), 1528 days of USPTO delay accrued from January 26, 2003 (14 months after the filing date) until the first notification under 35 U.S.C. § 132 was received. Under the USPTO's manner of calculating PTA, Applicants were given credit for the larger of the two delays, minus any delay by Applicants. Specifically, Applicants were given credit for 1465 days, resulting from the 1528 days under the § 154(b)(1)(A) determination, minus 63 days of Applicants' delay.

In view of the decision of the Federal District Court for the District of Columbia in Wyeth v. Dudas on September 30, 2008, Patentees submit it is entitled to a total patent term adjustment of 1982 days which is the sum of 1375 days of patent term adjustment due to exceeding three year pendency accrued until issuance of the patent, 670 days resulting from the PTO delay to issue the first notification under 35 U.S.C. § 132, and the 63 days of Applicants' delay.

In accordance with 37 C.F.R. §§ 1.705(b)(2)(iv), there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified application, as set forth in 37 C.F.R. § 1.704.


Customer No. 22,852
Attorney Docket No. 08613.0002-00

If there are any other fees due in connection with the filing of this request, or any additional deficiencies, please charge them to Deposit Account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: October 29, 2008

By: 
Trenton J. Roche
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